



U.S. Department of Justice

United States Attorney  
Southern District of New York

The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007

January 8, 2023

**BY ECF**

The Honorable Alvin K. Hellerstein  
United States District Judge  
Southern District of New York  
United States District Courthouse  
500 Pearl Street, Room 1050  
New York, New York 10007

SO ORDERED.

/s/ Alvin K. Hellerstein

Dated: 1/11/24

Alvin K. Hellerstein  
United States District Judge  
New York, New York

Re: *United States v. David Smothermon, 19 Cr. 382 (AKH)*

Dear Judge Hellerstein:

The Government writes, with the consent of defense counsel, to respectfully request an adjournment of the conference scheduled in the above-captioned matter for January 24, 2024.

The Court previously granted the defendant's request for an adjournment of the trial scheduled in this matter pending the Supreme Court's rulings in *Percoco v. United States* and *Ciminelli v. United States*, which both relate to the "right to control" theory of wire fraud. In May of last year, the Supreme Court issued its decisions in those cases. Since that time, the parties have been engaged in discussions about how the case will proceed and as to a possible pre-trial resolution of the case. Those discussions are ongoing. Accordingly, the parties respectfully request that the Court adjourn the conference scheduled for January 24, 2024 to a date on or after March 4, 2024, to permit the parties to continue their discussions about a pre-trial resolution of this matter. The Government also respectfully moves—with the consent of the defendant—for the exclusion of time under the Speedy Trial Act ("STA"), 18 U.S.C. § 3161(h)(7)(A), from January 24, 2024, until the new conference date set by the Court.

Respectfully submitted,

DAMIAN WILLIAMS  
United States Attorney

By:

  
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Assistant United States Attorney  
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cc: Terry Yates, Esq. and George Murphy, Esq. (by ECF)